

The preliminary hearing statute, K.S.A. 44-534a(a)(1) provides that the employee or the employer may make application for a preliminary hearing on the issues of furnishing medical treatment and the payment of temporary total disability compensation. The respondent, during the pendency of this appeal, tendered payment by check to the claimant for the past due medical expenses. Claimant refused the acceptance of this check and returned the check to respondent. Respondent argues that such offer of

payment of the past due medical expenses disposes of this appeal as there is no longer a controversy in reference to this issue.

Claimant, on the other hand, contends that the issue of whether or not the claimant suffered an accidental injury arising out of and in the course of her employment remains before the Appeals Board for a decision.

The Appeals Board agrees with the respondent and finds that the purpose of K.S.A. 44-534a is for either the employee or the employer to have an opportunity to present evidence at a preliminary hearing before the Administrative Law Judge on the issues of furnishing of medical treatment and payment of temporary total disability benefits. In this case, the issue involving payment of the medical bill was resolved when the respondent tendered payment. Accordingly, the Appeals Board does not have jurisdiction to review a preliminary hearing order when the requested benefit has been paid.

WHEREFORE, it is the finding, decision, and order of the Appeals Board, for the reasons stated above, that the Application for Review filed by the claimant is dismissed as the Appeals Board lacks jurisdiction to review the Order of Administrative Law Judge Robert H. Foerschler dated March 27, 1995.

IT IS SO ORDERED.

Dated this ____ day of June 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Mark E. Kolich, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director